

FILED

October 25, 1995

Cecil Crowson, Jr.

Appellate Court Clerk

**IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
SEPTEMBER 1995 SESSION**

STATE OF TENNESSEE,

Appellee,

V.

DELTON L. WATKINS,

Appellant.

)
) C.C.A. No. 01C01-9503-CR-00077
)
) Davidson County
)
) Hon. Thomas H. Shriver, Judge
)
) (Sexual Battery - 4 Counts)
)
)

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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
Judge

OPINION

A jury found appellant, Delton L. Watkins, guilty of four (4) counts of aggravated sexual battery. He was sentenced to twelve (12) years confinement for each count to be served concurrently. Appellant raises two issues on appeal: (1) whether the evidence was sufficient to support his conviction; and (2) whether he was correctly sentenced. We affirm.

At trial, the victim testified that appellant, on two separate occasions, touched both her breast and vaginal area. She testified that the incidents occurred prior to her thirteenth (13th) birthday and that penetration occurred during the second incident.

Appellant's first issue, challenging the sufficiency of the evidence, is based on the premise that because the victim's testimony was inconsistent, "the testimony should not be afforded enough weight to substantiate a conviction." The sole inconsistency alleged in appellant's brief was that prior to trial, the victim told Department of Human Services' workers that penetration had not occurred. Although appellant concedes that penetration is not a prerequisite to sexual battery, he states that the inconsistency "raises doubt as to whether the other incidents occurred at all." Appellant attempts to buttress his argument by alluding to the fact that the victim's testimony was uncorroborated.¹

Great weight is accorded jury verdicts in criminal trials. Jury verdicts accredit state's witnesses and resolve all evidentiary conflicts in the state's favor. State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983); State v. Banes, 874 S.W.2d 73, 78 (Tenn. Crim. App. 1993). On appeal, the state is entitled to both the strongest legitimate view of the evidence and all reasonable inferences which may be drawn therefrom. State v. Cabbage, 571 S.W.2d 832 (Tenn. 1978).

¹ There is no requirement that the testimony of a rape victim be corroborated. Montgomery v. State, 556 S.W.2d 559, 560 (Tenn. Crim. App. 1977).

Moreover, guilty verdicts remove the presumption of innocence, enjoyed by defendants at trial, and replace it with a presumption of guilt. State v. Grace, 493 S.W.2d 474 (Tenn. 1973). Appellants, therefore, carry the burden of overcoming a presumption of guilt when appealing jury convictions. Id.

When appellants challenge the sufficiency of the evidence, this Court must determine whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of a crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (1979); State v. Duncan, 698 S.W.2d 63 (Tenn. 1985); Tenn. R. App. P. 13(e). The weight and credibility of a witness' testimony remain matters entrusted exclusively to the jury as the triers of fact. State v. Sheffield, 676 S.W.2d 542 (Tenn. 1984); Byrge v. State, 575 S.W.2d 292 (Tenn. Crim. App. 1978).

Appellant was convicted of aggravated sexual battery. Aggravated sexual battery is "unlawful sexual contact with a victim by the defendant or the defendant by a victim . . . [when] the victim is less than thirteen (13) years of age." Tenn. Code Ann. §§ 39-13-504(a) & -502(a)(4) (1991). Sexual conduct is defined as the "intentional touching of the victim's, the defendant's, or any other person's intimate parts, or the intentional touching of the clothing covering the immediate area of the victim's . . . intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification." Tenn. Code Ann. § 39-13-501(6) (1991). "Intimate parts" include "the primary genital area, groin, inner thigh, buttock or breast of a human being." Tenn. Code Ann. § 39-13-501(2).

We find that the victim's testimony at trial set forth the essential elements of aggravated sexual battery. Although an inconsistency arises as to the issue of penetration, penetration is not material to a finding of aggravated sexual battery. Appellant further argues that the inconsistency in the victim's testimony undermines the state's case. However, assessing the credibility of a witness is exclusively "the purview of the jury." State v. Banes, 874 S.W.2d 73, 78 (Tenn. Crim. App. 1993).

Upon listening to the testimony at trial, viewing the witness' demeanor, and considering the witness' testimony in light of all the facts in the case, the jury chose to accredit the victim's testimony. That the jury accepted the veracity of the victim's testimony is not a basis for relief. Accordingly, reviewing the evidence in a light most favorable to the state, we conclude that the record amply supports the jury verdicts of aggravated sexual battery.

Appellant's second issue, "whether the trial court erred in finding no mitigating factors and considering three enhancement factors," has been waived. Appellant has failed to include, as part of the record on appeal, the sentencing hearing transcript. Without a complete record, it is impossible for us to conduct a de novo review of the sentence as provided in Tenn. Code Ann. § 40-35-401(d) (1990). See State v. Beech, 744 S.W.2d 585, 588 (Tenn. Crim. App. 1987) (holding "in the absence of an adequate record we must presume that the trial court's ruling was adequately supported by the evidence."). Notwithstanding waiver, upon review of the record presently before us, appellant's argument neither overcomes the trial judge's presumption of correctness nor presents a sufficient justification for reduction of his sentence.² Accordingly, the twelve (12) year sentences on each count of aggravated sexual battery, to be served concurrently, remains proper.

AFFIRMED

PAUL G. SUMMERS, JUDGE

CONCUR:

² Appellant acknowledged, in his Response To Motion For Consecutive Sentencing, that he was convicted of two (2) or more statutory offenses involving sexual abuse of a minor. Enhancers, including extensive prior record, appear unrefuted.

JOHN H. PEAY, JUDGE

DAVID H. WELLES, JUDGE